MAR 7 - 2005
OFFICE OF THE CLERK

No. 04-881

IN THE
Supreme Court of the United States

JAMES LOCKHART,
Petitioner,

v.

UNITED STATES, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITIONER'S REPLY

BRIAN WOLFMAN
(*Counsel of Record*)
ADINA H. ROSENBAUM
PUBLIC CITIZEN LITIGATION GROUP
1600 20TH STREET, NW
WASHINGTON, D.C. 20009
(202) 588-1000

Counsel for Petitioner

March 2005

PETITIONER'S REPLY

The government has not filed an opposition but rather a brief in which it agrees with the basic point of Mr. Lockhart's petition: "This Court's review is warranted to resolve [a] direct circuit conflict, which prevents the uniform administration of a central part of the federal student loan program." Gov't Br. 11. As the government acknowledges, because this case came to the Ninth Circuit on the government's motion to dismiss, Mr. Lockhart's allegations that his student loans are more than 10 years past due and "would have expired under the Debt Collection Act's ten-year time limit of 31 U.S.C. 3716(e)," *id.* at 14, must be taken as true. The government goes further, however, and acknowledges that, in fact, the 10-year period has expired with respect to at least some of Mr. Lockhart's loan obligations "and that therefore this case appears to be an appropriate candidate for certiorari review." *Id.* at 14-15; *see id.* at 8 (same).

Nevertheless, the government suggests that the Court "may wish to hold this petition" pending disposition of *Spellings v. Lee*, No. 04-1139 (filed Feb. 25, 2005), where, the government asserts, "the issue is squarely presented on a fully developed record." Gov't Br. 8. There is no reason to hold this petition—which was filed nearly two months before *Lee*—because it is as good a vehicle (if not a better vehicle) for resolving the question presented. The fact that this case comes before the Court from the granting of a motion to dismiss, where the facts have not been judicially determined, is irrelevant. This Court frequently resolves legal questions that come to it after the grant of a motion to dismiss for failure to state a claim—after all, the principal purpose of such a motion is to isolate purely legal issues from facts that may ultimately be disputed—and thereafter remands to the lower courts for application of the Court's ruling. Here, the government does not argue, nor could it, that this Court's resolution of the

question presented will somehow be hindered by the procedural posture of this case or by concerns over the facts. In short, if this Court grants certiorari in this case, there is no doubt that it will be able to resolve the question presented cleanly and definitively.

The government's speculation about whether the Debt Collection Act's 10-year limitations period could have been tolled by a bankruptcy filing, Gov't Br. 15-16, is irrelevant for two reasons. First, as noted above, the *only* issue presented in this case is the one decided by the Ninth Circuit adversely to Mr. Lockhart: whether the 10-year limitations period bars collection of Mr. Lockhart's student loans. If there were a bankruptcy filing relevant to this case, that issue—like any other issues not decided below or not presented in the petition—would be taken up on remand. Second, consistent with the government's statement that it is not aware of any bankruptcy filing by petitioner that would have tolled the 10-year limitations period, Gov't Br. 15, Mr. Lockhart has, in fact, never filed for bankruptcy. The *pro se* complaint's references to "bankruptcy" were based on Mr. Lockhart's lay understanding that his payment of a private student loan debt before satisfaction of his federal loan debt constituted "acts of . . . bankruptcy." SER 2, at 15. Thus, even assuming (incorrectly) that a bankruptcy filing would somehow undermine the petition's "certworthiness," this case remains an ideal vehicle for resolving the question presented because Mr. Lockhart has never filed for bankruptcy.*

---

*We are informed that the respondent in *Spellings v. Lee* intends to oppose certiorari, among other reasons, on grounds related to respondent Lee's particular circumstances. If, however, the Court were inclined to grant both petitions, we (continued...)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brian Wolfman
(*Counsel of Record*)
Adina H. Rosenbaum
Public Citizen Litigation Group
1600 20th Street, NW
Washington, D.C. 20009
(202) 588-1000

Counsel for Petitioner

March 2005

---

*(...continued)
agree with the government's suggestion that it would be proper for the Court to consolidate the two cases and treat the government as respondent in both cases for briefing and argument. *See* Petition in *Spellings v. Lee*, at 8 n.1.